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Where property is obtained by fraud and held by the person committing the fraud, the wrong-doer will be converted into a trustee *ex maleficio*. *Angle v. Chicago, St. Paul, etc., Ry.*, 151 U. S., 1; *Piper v. Hoard*, 107 N. Y., 73. This is true even though the representations be false in fact, though made without any fraudulent intent. *Wingerter v. Wingerter*, 71 Cal., 105. And to constitute such a trust it is not necessary that a confidential relationship exist between the parties. *Christy v. Sill*, 95 Pa. St., 380; *Nat. Bank v. Johnson*, 51 Nebr., 546. But the American authorities seem to be in conflict with the principal case, for they hold that in general a constructive trust will not be declared because of the fraud of a third person when no fraud can be shown against the grantee of the property. *Beach v. Dyer*, 93 Ill., 295; *Pomeroy's Equity Jurisprudence*, Vol. 2, page 629. The English authorities, on the other hand, are in accord with the principal case. *Bridgman v. Green*, 2 Ves., 627; *Huguenin v. Basely*, 14 Ves., 289. But if the person guilty of the fraud was acting as agent of the grantee, the fraud is attributed to the grantee. *Graves v. Spier*, 58 Barb. (N. Y.), 349; *Barker v. Barker*, 27 Nebr., 135. And where money belonging to a principal and given to an agent for a particular purpose, was received from the agent by a third party, who had no knowledge of the actual ownership, but for an illegal purpose, the third party was held a trustee *de son tort* for the principal. *Stock and Grain Exchange v. Bendinger*, 109 Fed., 926.

WATERS AND WATER COURSES—POLLUTION OF STREAM—RIGHTS OF RIPARIAN OWNER'S.—*SHOFFNER v. SUTHERLAND*, 68 S. E., 996 (VA.).—*Held*, that where an operator of a sawmill threw sawdust into a stream, so that the deposits of sawdust in the stream discolored the water, and in warm weather gave it an offensive odor, causing live-stock to refuse to drink it and making the water unwholesome and less fit for domestic purposes, and where physicians believed that the decaying sawdust deposits affected the purity of the water and generally caused disease along the stream where it was found, such use of the stream was in violation of the rights of a lower riparian owner and he could sue.

By the weight of authority every riparian owner is entitled to have the water in a stream which passes through his land in an unpolluted condition, and the upper riparian owner cannot by any unreasonable use of the stream contaminate the water so as to injure the lower riparian owner. *Montana Co. v. Gehring*, 75 Fed., 385; *McGennes v. Adriatic Mills*, 116 Mass., 177; *Strobel v. Kerr Salt Co.*, 164 N. Y., 303. The question as to what is a reasonable and what is not a reasonable use of the stream is generally a question of fact for the jury to decide. *Phillips v. Sherman*, 64 Me., 171; *Red River Roller Co. v. Wright*, 30 Minn., 249. Some courts have, however, decided that the mere maintaining of a sawmill on a stream is not an unreasonable use. *People v. Elk River Mill Ech. Co.*, 107 Cal., 221; *Jacobs v. Allard*, 42 Vt., 303. Any riparian owner whose rights have been invaded may sue. *Carhart v. Auburn Gas Co.*, 22 Barb. (N. Y.), 297. One of the reliefs which the riparian owner is entitled to by virtue of the injury he has sustained as a result of the pollution is an

action for damages. *The Weston Paper Co. v. Pope*, 155 Ind., 394. Where the pollution is of a continuous nature, and the prospects are that injury will be caused in the future, courts of equity will issue an injunction to restrain the cause of such injury. *Indianapolis Water Co. v. American Strawboard Co.*, 53 Fed., 970; *Platt Bros. Co. v. City of Waterbury*, 72 Conn., 531.